

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	:	
The Peoples Gas Light and Coke Company	:	
	:	10-0237
Petitions Pursuant to Rider VBA of	:	10-0238
Schedule of Rates for Gas Service to	:	(Cons.)
Initiate a Proceeding to Determine the	:	
Accuracy of the Rider VBA	:	
Reconciliation Statement	:	

PROPOSED ORDER

By the Commission:

I. PROCEDURAL HISTORY

On March 29, 2010, North Shore Gas Company ("North Shore" or "NSG") and The Peoples Gas Light and Coke Company ("Peoples Gas" or "PGL") (together, the "Utilities") each filed a Petition to initiate an annual reconciliation proceeding to determine the accuracy of statements submitted to this Commission by each Utility pursuant to Rider VBA (an abbreviation for "Volume Balancing Adjustment") in its Schedule of Rates for Gas Service.

Pursuant to notice given as required by law and the rules and regulations of the Commission, hearings in these dockets were convened at the Commission's offices in Chicago, Illinois on April 21, 2010, September 9, 2010, October 21, 2010 and December 1, 2010, before a duly authorized Administrative Law Judge ("ALJ") of the Commission. At the April 21, 2010 status hearing, the ALJ granted the unopposed oral motion of the Commission's Staff ("Staff") to consolidate these dockets.

The Office of the Attorney General of the State of Illinois ("Attorney General" or "AG") filed a verified petition to intervene on September 13, 2010. There was no opposition to that petition.

At the evidentiary hearing conducted on December 1, 2010, the testimony and exhibits of Valerie H. Grace (NSG Ex's. 1.0 & 1.1 and PGL Ex's. 1.0 and 1.1) were admitted into the record. Also admitted were AG Cross-Ex. 1 (PGL's Rider VBA), Cross-Ex. 2 (NSG's Rider VBA) and Cross-Ex. 3 (NSG's and PGL's responses to nine data requests).

On December 29, 2010, the Utilities filed a draft Proposed Order for adoption as the Commission's Order in these proceedings. On January 4, 2011, the AG filed an

Initial brief ("IB"). The AG filed an Errata to that brief on January 5, 2011. On January 10, 2011, Staff filed a Reply Brief ("RB"), which addressed matter contained in the AG's Initial Brief.

On January 13, 2011, the record was marked "Heard and Taken."

On January 18, 2011, the Utilities filed an RB addressing matter asserted in the AG's Initial Brief.

On January 20, 2011, the ALJ issued a Proposed Order, which was served on all parties.

II. COMMISSION ANALYSIS AND CONCLUSIONS

A. The Petitions - Utilities' Position

North Shore's and Peoples Gas' Schedules of Rates for Gas Service each include Rider VBA. The Commission approved the rider for each Utility in Peoples Gas Co., et al.¹, and it became effective on February 14, 2008. According to each Utility's tariffs, the Volume Balancing Adjustment "stabilizes the margin approved by the Commission in the Company's most recent rate proceeding."² In essence, the primary purpose of revenue decoupling measures such as Rider VBA is to increase the likelihood that a utility will recover its allowed revenue requirement when volume-reduction policies, such as energy efficiency, are in place³.

Rider VBA applies to Service Classification ("S.C.") No's. 1 and 2. Annually, no later than March 31, the Utilities must file a statement of the reconciliation adjustment ("RA") components that will apply to the nine-month period beginning on the following April 1. The Utilities must calculate separate adjustments for sales and transportation customers within each service classification.

Section D of Rider VBA also requires that when the Utility files its reconciliation statement, it must also file a petition for a determination of the accuracy of that statement. The reconciliation period for the purpose of these proceedings is January 1, 2009 through December 31, 2009.

The RA components that will be effective for North Shore's S.C. No. 1 sales customers and transportation customers, respectively, are a charge of 0.25 cents per therm and a credit of 0.14 cents per therm. Over the nine-month period beginning April 1, 2010, North Shore will recover \$236,508.23 from S.C. No. 1 sales customers and refund \$7,185.79 to S.C. No. 1 transportation customers⁴.

¹ Docket No's. 07-0241/07-0242 (consol.), Order, Feb. 5, 2008.

² AG Cross-Ex's 1 & 2.

³ Peoples Gas Co., et al., Order, Feb. 5, 2008, at 126.

⁴ NSG Ex. 1.0 at 7; NSG Ex. 1.1.

The RA components that will be effective for North Shore's S.C. No. 2 sales and transportation customers, respectively, are charges of 0.08 cents per therm and 0.22 cents per therm. Over the nine-month period beginning April 1, 2010, North Shore will recover \$18,106.62 from S.C. No. 2 sales customers and \$76,926.72 from S.C. No. 2 transportation customers⁵.

The RA components that will be effective for Peoples Gas' S.C. No. 1 sales customers and transportation customers are a charge of 0.60 cents per therm and a credit of 1.54 cents per therm, respectively. Over the nine-month period beginning April 1, 2010, \$2,035,352.60 will be recovered from S.C. No. 1 sales customers and \$360,648.34 will be refunded to S.C. No. 1 transportation customers⁶.

The RA components that will be effective for Peoples Gas' S.C. No. 2 sales and transportation customers are charges of 0.30 cents per therm and 0.41 cents per therm, respectively. Over the nine-month period beginning April 1, 2010, \$518,632.10 will be recovered from S.C. No. 2 sales customers and \$836,751.03 will be recovered from S.C. No. 2 transportation customers⁷.

The Utilities each filed a supplement to their Petitions showing their rates of return ("ROR") and their returns on equity ("ROE") with and without Rider VBA⁸. Those data are:

	With Rider VBA		Without Rider VBA	
	ROR	ROE	ROR	ROE
North Shore	4.74%	4.32%	5.08%	4.93%
Peoples Gas	4.29%	4.05%	4.59%	4.58%

B. The Petitions - Staff's Position

Staff did not file testimony. In its RB, Staff states that it has no objection to the relief requested in the Petitions⁹.

C. The Petition's - AG's Position

The AG did not file testimony. In its IB, the AG states that "[t]he People do not challenge the accuracy of [the Utilities'] reconciliation amounts...[and] urge the Commission to approve the aforementioned reconciliation amounts."¹⁰

⁵ NSG Ex. 1.0 at 7-8; NSG Ex. 1.1.

⁶ PGL Ex. 1.0 at 7; PGL Ex. 1.1.

⁷ PGL Ex. 1.0 at 7-8; PGL Ex. 1.1.

⁸ Supplement to Petitions, filed April 20, 2010.

⁹ Staff RB at 1.

¹⁰ AG IB at 4.

D. Additional Matter Raised by the AG

The AG urges the Commission to address and resolve a fundamental matter that does not appear in the Petitions. Specifically, the AG asks that we find Rider VBA unlawful and terminate it¹¹. The AG bases its request on principles recently articulated in Commonwealth Edison Co. v. Illinois Commerce Commission (“ComEd”) ¹², in which the Illinois Appellate Court concluded that the utility rider in that case contravened the rule against single-issue ratemaking. The AG contends here that Rider VBA is similarly improper because it fails to satisfy the criteria for rate riders applied in ComEd.

Both Staff and the Utilities respond that the legal sufficiency of Rider VBA cannot and should not be considered in these proceedings¹³. The Utilities also present a substantive defense of the rider¹⁴. The Commission will not discuss either the elements of that defense or the AG’S assertions that provoked it, because we conclude that the viability of Rider VBA will not be addressed in these dockets.

This is neither the time nor the appropriate procedural mechanism for re-visiting our approval of Rider VBA in Peoples Gas Co., et al.. The Utilities initiated these cases for the precise purpose set forth in their rate schedules - a “reconciliation to determine the accuracy of the statement [of Reconciliation Adjustment Components].”¹⁵ Nothing in our prior Orders suggests that a Rider VBA reconciliation proceeding is also a proper vehicle for attacking Rider VBA itself. Indeed, in previous VBA reconciliation proceedings, we expressly held to the contrary¹⁶. Nonetheless, even if we assumed today, solely for the sake of argument, that such a challenge could be heard in a reconciliation case, the AG did not mount that challenge until the briefing stage of these dockets¹⁷. Consequently, the Utilities had no opportunity to present facts that would distinguish ComEd from the instant case. (ComEd is not self-effectuating - it does not prohibit riders as a matter of law.) Thus, even if the Commission were inclined to expand Rider VBA reconciliation cases to accommodate assaults on the legitimacy of the rider (and we evince no such inclination in this Order), we could not fairly do so in these dockets.

Moreover, Peoples Gas Co., et al. is currently before the same district of the Appellate Court that decided ComEd, and the legality of Rider VBA is among the issues

¹¹ In the event of such termination, the AG recommends that the Utilities be required to promptly initiate new proceedings to reconcile amounts collected under Rider VBA after the applicable period in this case. AG IB at 10.

¹² 935 N.E.2d 685 (2nd Dist. 2010).

¹³ Staff RB at 2-4; Utilities RB at 2-5.

¹⁴ Utilities RB at 5-8.

¹⁵ AG Cross-Ex’s 1 & 2, Sec. D.

¹⁶ In re North Shore Gas Co., Dckt. 09-0123, Order, Feb. 10, 2010; In re Peoples Gas Co., Dckt. 09-0124, Order, Feb. 10, 2010.

¹⁷ In fact, although ComEd was filed by the Court of Appeals on September 30, 2010, the AG did not mention that case - much less declare an intention to argue the invalidity of Rider VBA based on that case - at either the October 21, 2010 or December 1, 2010 hearing in these proceedings.

under review¹⁸. It is not clear to the Commission that we retain the power to address Rider VBA's legal sufficiency pending appellate review (and the AG does not provide a basis for concluding that we do)¹⁹. Even if we do retain such power, we presently perceive no benefit to taking action before the Appellate Court provides direction.

That said, we do not intend to derogate any right the AG has to seek relief before the Commission. Staff maintains that Section 10-113 of the Public Utilities Act²⁰ affords such a right, insofar as that provision authorizes a party to request that the Commission rescind, alter or amend a prior Order or take action based on new facts²¹. Under that view, Section 10-113 potentially enables the AG to seek rescission or amendment on the ground that ComEd empowers and compels the Commission to invalidate Rider VBA without awaiting appellate review. The Commission takes no position here with respect to the outcome of any such request. At this juncture, it is sufficient to hold that we will not entertain a challenge to the legal sufficiency of Rider VBA in these dockets.

III. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) North Shore Gas Company is an Illinois corporation engaged in the distribution of natural gas to the public in the State of Illinois and, as such, is a public utility within the meaning of the Public Utilities Act;
- (2) The Peoples Gas Light and Coke Company is an Illinois corporation engaged in the distribution of natural gas to the public in the State of Illinois and, as such, is a public utility within the meaning of the Public Utilities Act;
- (3) the Commission has jurisdiction over North Shore and Peoples Gas and of the subject matter of this proceeding;
- (4) the recitals of fact and the conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) Peoples Gas and North Shore each filed a reconciliation of rate case margin revenue and actual margin revenue under Rider VBA, Volume Balancing Adjustment, of its Schedule of Rates, for the period January 1, 2009, through December 31, 2009;
- (6) neither Staff nor any party opposed the accuracy of the reconciliation statements;

¹⁸ See, People ex. Rel. Madigan v. Commerce Commission, App. No. 1-08-2055, Slip. Op., Dec. 17, 2010.

¹⁹ It may be - and we need not and do not decide this here - that the appropriate procedural step is to address the impact of ComEd on Rider VBA before the Appellate Court.

²⁰ 220 ILCS 5/10-113.

²¹ Staff RB at 3-4.

- (7) the RA components that each of North Shore and Peoples Gas implemented for the nine-month period beginning April 1, 2010, are uncontested;
- (8) North Shore's return on equity for 2009 including Rider VBA results was 4.32% and excluding Rider VBA results was 4.93%, and its rate of return for 2009 including Rider VBA was 4.74% and the rate of return excluding Rider VBA was 5.08%;
- (9) Peoples Gas' return on equity for 2009 including Rider VBA results was 4.05% and excluding Rider VBA results was 4.58%, and its rate of return for 2009 including Rider VBA was 4.29% and the rate of return excluding Rider VBA was 4.59%;
- (10) for the reasons discussed in the prefatory portion of this Order, the Commission rejects the AG's request to address the legal sufficiency of Rider VBA in these proceedings; and
- (10) all motions, petitions, objections or other matters in this proceeding which remain undisposed of should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED that, North Shore's and Peoples Gas' reconciliation statements and the Reconciliation Adjustments are approved;

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATE:	January 20, 2011
BRIEFS ON EXCEPTIONS DUE:	February 3, 2011
REPLY BRIEFS ON EXCEPTIONS DUE:	February 10, 2011

David Gilbert
Administrative Law Judge